

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**PRO-FOOTBALL, INC.,**

**Plaintiff,**

**v.**

**AMANDA BLACKHORSE, MARCUS  
BRIGGS-CLOUD, PHILLIP GOVER,  
JILLIAN PAPPAN and COURTNEY  
TSOTIGH,**

**Defendants.**

**Civil Action No.: 1:14-cv-1043-GBL-IDD**

**DEFENDANTS’ OPPOSITION TO ACLU’S  
MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

Defendants Amanda Blackhorse, Marcus Briggs-Cloud, Phillip Gover, Jillian Pappan and Courtney Tsotigh (“Defendants”) respectfully oppose the motion by the American Civil Liberties Union and American Civil Liberties Union of Virginia (collectively, “ACLU”) for leave to file a brief of *amicus curiae* regarding Plaintiff’s Constitutional arguments. [Dkt. 76] The proposed ACLU brief comes too late, unnecessarily burdens the Court and the parties with an additional 20 pages of briefing, and intrudes on the balanced schedule negotiated by the Plaintiff, Defendants, and the United States, and then adopted by this Court in January. Accordingly, the motion should be denied.

**ARGUMENT**

A trial court should only accept a brief of *amicus curiae* if it is both timely and useful. *Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007). In assessing the usefulness of the proffered brief, the Court should consider whether existing counsel is in need of assistance and

whether further briefing will be helpful to the Court. *Bryant v. Better Business Bureau*, 923 F. Supp. 720, 728 (D. Md. 1996) (*cited by Tafas*, 511 F. Supp. 2d at 659).

The proffered ACLU *amicus* brief is not timely. ACLU was on notice of Plaintiff's intent to raise Constitutional arguments since the Complaint's filing in August, 2014. In addition, the separate briefing of Constitutional issues was a primary issue at the January 15, 2015 Scheduling Conference, and on January 22, 2015 the parties jointly proposed a briefing schedule that allotted the parties 170 pages *solely on the Constitutional issues*. Yet, at no time prior to the Scheduling Conference or even during the month after the Court's January 26, 2015 Scheduling Order did ACLU voice any interest in filing an *amicus* brief. ACLU's motion comes months late, as Defendants are preparing their opposition to Plaintiff's Constitution-based arguments, and while the parties are separately briefing whether Plaintiff's "Redskins" marks are disparaging. Had ACLU announced its intention earlier, the parties could have proposed an alternative or revised briefing schedule to the Court. Now, it is simply too late.

Moreover, Plaintiff has no need for outside assistance in presenting its Constitutional arguments to the Court. Plaintiff is represented by one of the largest law firms in the country, which has vigorously litigated this case and its predecessor for many years before a variety of forums; there is no reason to believe that they are not competent to adequately address the issues without aid from ACLU. Moreover, the Court has already agreed to increase the page limit for Plaintiff to brief the Constitutional issues, permitting a 40 page reply brief.<sup>1</sup> Allowing 20 additional pages from ACLU would merely increase the burden on Defendants and the Court to review yet more briefing, to no discernible benefit.

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<sup>1</sup> Defendants consented to Plaintiff receiving additional pages for its reply because the United States is filing a separate brief opposing Plaintiff's Constitutional arguments. The proposed ACLU brief upsets this negotiated balance.

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court deny the Motion for Leave to File Brief of *Amici Curiae*.

Dated: March 9, 2015

Respectfully submitted,

/s/ Jeffrey J. Lopez

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of March, 2015, the foregoing pleading or paper was filed and served electronically by the Court's CM/ECF system upon all registered users in this action.

/s/ Jeffrey J. Lopez

Jeffrey J. Lopez